

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 2003 of 1981

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SHAH CHANDRAKANT MOHANLAL

Versus

VYARA VIBHAG VIVIDH KARYAKARI SAHKARI MANDLI LTD

Appearance:

MR MEHUL SHARAD SHAH for Petitioner

MR BB NAIK for Respondent No. 1

SERVED for Respondent No. 3

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 17/12/97

ORAL JUDGEMENT

This Revision Application under section 29(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short, 'the Act of 1947') has been filed challenging the judgment and decree dated 28.12.79 whereby the Extra Asstt. Judge, Surat rejected the petitioner's appeal and upheld the judgment and decree

dated 6.12.79 passed by the Civil Judge (JD), Vyara dismissing the plaintiff's suit.

2. The petitioner-plaintiff filed a suit in the year 1977 in the Court of Civil Judge (JD), Vyara stating therein that the suit premises was rented out to defendant No.1-Shri Vyara Vibhag Vividh Karyakari Sahkari Mandli Ltd. and defendant No.2-Vaghzari Seva Sahkari Mandli Ltd. on a monthly rent of Rs.80/- per month. The suit premises was rented out for office and godown purpose. The suit premises has been sublet to defendant No.3-Shri Kanpura Vibhag Karyakari Mandali Ltd. Defendants No.1 and 2 contested the suit and denied the allegations. Defendant No.3 also filed a separate written statement denying the allegations that they were sub-tenants in the suit premises. The trial court dismissed the suit for possession but decreed for an amount of Rs.3,250/- against defendants No.1 & 2. Plaintiff-petitioner filed appeal which was rejected by the order of learned Extra Asstt. Judge, Surat dated 13.2.1981.

3. Mr Mehul Sharadbhai Shah, learned Advocate appearing for the petitioner submits that both the courts below have committed error in refusing to pass decree for possession inspite of the fact that there is reliable evidence on record to show that defendants No.1 and 2 have sublet part of the suit premises to defendant No.3. It is submitted by him that Mr Ramanbhai, the Secretary of defendant No.3 has categorically stated that 1/3 of the rent was paid by Kanpura Vibhag Vividh Karyakari Mandli Ltd. to defendant No.2. The receipts have been produced as Exhibits 86, 87 and 88. He further submits that the photographs of the suit premises have been produced at Exh.64 to 73 which shows that there is a cupboard of defendant No.3 on the suit premises. He further submits that the learned Judge has committed error in not relying on the statement of Ramanbhai at Exh.84 on unsustainable grounds. On the other hand, Mr B B Naik, learned Advocate appearing for the respondents submits that both the Courts below have disbelieved the testimony of Ramanbhai. The Courts below have also given cogent reasons for not believing the version given by the plaintiff of sub-letting on the basis of receipts at Exhibits 86, 87 and 88 and further the photographs at Exhibits 74 to 73. Mr Naik submits that power of this Court under section 29 (2) of the Act of 1947 is limited and it is not open for this Court to interfere in a finding of fact unless the finding can be said to be manifestly perverse or erroneous. He placed reliance on a decision in the case of HARI SHANKAR v. GIRDHARI LAL

CHOUDHARY, reported in AIR 1963 SC 698, in the case of P B DESAI vs. C M PATEL, reported in AIR 1974 SC 1059, in the case of BHAICHAND v. LAKSHMISHANKAR, reported in AIR 1981 SC 1690 and in the case of JIVATBEN BRAHMBHATT v. NARESHCHANDRA BRAHMBHATT, reported in 1983 GLH (UJ) 68. On the question of subletting, the learned Advocate submits that the plaintiff is required to establish the exclusive possession of the sub-tenant on the suit premises and further that the tenant has parted with possession for consideration. He has also placed reliance on decision in the case of R K PATWA v TITHALDAS CHIMANLAL, reported in 1993 (1) GLH 748, in the case of DR. P P SHETH v DHANJIBHAI & SONS, reported in 1994 (1) GLR 71. In the case of HARI SHANKAR (supra), reported in 1963 SC 658 dealing with the analogous provisions of section 35 of the Act, the Apex Court held thus -

"Under section 115 of the Civil Procedure Code, the High Court's powers are limited to see whether in a case decided, there has been an assumption of jurisdiction where none existed, or a refusal of jurisdiction where it did, or there has been material irregularity or illegality in the exercise of that jurisdiction. The right there is confined to jurisdiction and jurisdiction alone. In other Acts, the power is not so limited, and the High Court is enabled to call for the record of a case to satisfy itself that the decision therein is according to law and to pass such orders in relation to the case, as it thinks fit."

In P B DESAI's case (supra), reported in AIR 1974 SC 1059, the Apex Court held that the High court can interfere with the decision of the lower court under section 29(2) of the Act of 1947 only if there is miscarriage of justice due to mistake of law. The Court further held that the High Court cannot reassess the value of the evidence and interfere with a finding of fact merely because it thinks that the appreciation of the evidence by the lower Court is wrong and the Court should have reached a different conclusion of fact from what it did. In BHAICHAND's case, (supra), reported in AIR 1981 SC 1690, the Court held that

"Under section 29(2) although the High Court has a wider jurisdiction than the one exercisable under section 115 of the Civil Procedure Code, its revisional jurisdiction can only be exercised for a limited purpose with a view to satisfying itself that the decision was according to law."

It emerges from the aforesaid discussion that the scope of revision under section 29(2) is wider than the power under section 115 of the CPC. However, the Court cannot reappreciate the evidence but it has to ensure that the judgment is according to law or to say that it is based on settled legal position. A finding based on documentary evidence supported by cogent and convincing reasons based on settled legal position cannot be interfered by this Court in exercise of section 29(2) of the Act of 1947, but manifest or patent error of law in the proceedings when there is clear ignorance and disregard of provisions of law, the same can be corrected by this Court.

4. In the instant case, it is the positive case of the plaintiff that a part of the premises has been let out to respondent No.3 Kanpura Vibhag Karyakari Mandali Ltd. The plaintiff has produced three rent receipts executed by the defendants No.1 and 2 in favour of defendant No.3. Photographs of the premises has also been produced which show a cupboard of defendant No.3 on the suit premises. Ramanlal, the Secretary of defendant No.3 has appeared in the witness box. He has admitted that the rent is being paid by defendant No.3 for the part of the subject-premises to the defendants. However, this evidence has been disbelieved by the Courts below on unsustainable grounds. So far as the photographs are concerned, the Court did not find the said evidence of any use on the ground that there is nothing to show that the photographs are of the suit premises. While appreciating the evidence in this regard, the court has ignored evidence of Nanubhai at Exh.63. He is the photographer and he has categorically stated that the photograph showing the cupboard of defendant No.3 is of the suit premises. The Courts below committed manifest error in totally ignoring the evidence of Nanubhai. So far as the rent receipts Exhs.86, 87 and 88 are concerned. I have a look at them. It is clear that the rent receipts are given by defendants No.1 and 2 in favour to defendants No.3. It also includes the charges for the electricity. This evidence has been rejected by the Courts below only on the ground that there is nothing to show that the rent receipts belong to the suit premises. Once the rent receipt is produced, it was for the original tenants to show that to which premises the said receipts belong. I put a question to Mr B B Naik, learned Advocate appearing for the defendant that even today if the defendant could show to which premises the said receipts belong. Defendants are in rented premises and there is nothing to show that they have any premises

of their own from which they are earning the rent. The defendant No.1 is a Cooperative Society. They must be maintaining regular record of their income. Once it is admitted that the receipts Exhs. 86, 87 and 88 are rent receipts given by the Defendants in favour of defendant No.3, it must be presumed that the receipts are of the suit premises unless the defendant can show that the receipts belong to some other premises. The learned Judge has taken a superficial view of the most important and clinching evidence, without appreciation in detail and in its right perspective. So far as the testimony of Ramanlal is concerned, it has been rejected only on the ground that he has taken contrary stand than what taken by him in the written statement. If the statement of Ramanlal is read along with the two other evidence i.e. photographs of the suit premises as well as the rent receipt, there should not be any reason to disbelieve the statement of Ramanlal. Thus, in my opinion, the finding arrived at by the Courts below cannot be said to be based on convincing reasons. There is a manifest error causing serious miscarriage of justice.

5. In view of the aforesaid, this Civil Revision Application is allowed. The judgment dated 30.12.1981 passed by the Extra Asstt. Judge, Surat and the judgment passed by the Civil Judge (JD), Surat dated 6.12.1979 are quashed and the plaintiff's suit for possession is decreed. Rule made absolute accordingly.

6. Mr B B Naik, learned Advocate appearing for defendant No.1 submits that operation of the order of this Court may be stayed for a period of 8 weeks as the respondent-defendant intends to approach the Supreme Court. Mr Mehul Sharadbhai Shah, learned Advocate appearing for the plaintiff has opposed the prayer. However, in the facts and circumstances of the case, it is directed that the order of this Court shall not be given effect for a period of four weeks.

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msp.